C/F/m/- (3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION NO. 2790 /2005

PETITIONER / DEFENDANT : Gulab S/o Villeshwar Gupta, aged 65 years, R/o Darripali, Raigarh (C.G.)

-VERSUS-

RESPONDENTS / PLAINTIFFS :

1. Chandreshekhar Gupta/Ganesh Ram Gupta, aged 62 years, R/o Village-Baghadola, Raigarh (C.G.)

2. Ghasiya Gupta, S/o Ganeshram Gupta, aged 56 years, Village-Baghadola, Raigarh (C.G.)

P.R. No. 2938/05
Presented by Shri Sushil Sahu
dated 22/6/05

WRIT UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A SUITABLE WRIT, ORDERS OR DIRECTION.

The above named petitioner most humbly and respectfully begs to submit as under: -

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(31)

आदेश पत्रक

मामला क्रमांक ...WP 2790/05... **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	08-07-2005 Shri Rajeev Shrivastava, counsel for the petitioner. Heard on the question of admission. The petitioner has preferred this writ petition under Article 227 of the Constitution of India questioning the legality, validity and propriety of the order dated 25-6-2005 passed by the Additional Civil Judge, Class-I, in Civil Suit No.36-A/2004 whereby the learned trial Court has rejected the prayer made by the petitioner herein for allowing him to produce the witnesses namely Narendra Kumar and Suresh. The facts in brief which are necessary for disposal of this writ petition are that the respondents herein filed a civil suit before the Court below against the petitioner herein for specific performance of the contract and prayed that the defendant be directed to transfer the land in question mentioned in Schedule 'A' in favour of the plaintiffs by a registered sale deed, and in case the defendant refused to execute the sale deed then the Court should execute the sale deed in their favour. Thereafter, the petitioner herein filed the written statement, issues were framed and the plaintiffs have closed their evidence. The matter was fixed for evidence of the petitioner.	

देखे)

XI-HC-22

32

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P. 2790/05 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	-2-	

Perusal of order sheet dated 23-6-2005 reveals that on that day the petitioner herein produced the affidavit of himself and two other witnesses namely Lalit & Sahebram and for cross-examination of those witnesses counsel for the plaintiffs sought an adjournment. Accordingly, the matter was adjourned for 25-6-2005. On that day a request was also made on behalf of the petitioner herein that he wants to summon two witnesses as without summoning it is difficult for him to produce those witnesses. On this an objection was raised by counsel for the plaintiffs that the name of the witnesses does not find in the list. The Court below observed that the petitioner herein has already taken three adjournments for adducing evidence and before that date the defendant/petitioner herein never showed his intention to produce these witnesses and the defendant wanted that in addition to himself he wants to produce affidavits of two witnesses. The right of defendant to produce any other witness was closed and the matter was fixed for cross-examination of defendant and his witnesses.

On 25-6-2005 when the impugned order was passed the defendant and his two witnesses were discharged after cross-examination. The petitioner herein moved an application under Order 18 Rule 4 of the Code of Civil Procedure for production of two witnesses, copy of the same was supplied to counsel for the

(क्रमशः अगले पृष्ठ पर देखिये)

33

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

-3-

plaintiffs and the same was objected by the plaintiffs. Counsel for the plaintiffs had again raised an objection and submitted that the names of these witnesses were not cited in the list by the petitioner and the Court permitted the petitioner herein to produce only three witnesses including himself, and other request made by the petitioner had already been rejected by the Court. Therefore, the petitioner cannot be permitted to summon other one witness and the Court rejected the prayer.

Shri Rajeev Shrivastava, learned counsel for the petitioner herein submitted that only three opportunities were granted to the petitioner whereas the plaintiffs took five years time to complete their evidence. He further submitted that one witness was present in the court on that date and the petitioner wanted to examine two witnesses, but the said request was rejected by the trial Court arbitrarily.

Having heard learned counsel for the petitioner, I have perused the above orders. It is evident from the above orders that the two witnesses to whom the petitioner herein wanted to examine one witness was present in the Court, but these witnesses were not listed witnesses and the order dated 23-6-2005 reveals that the petitioner herein made it clear before the Court that he wants to examine three persons namely, the petitioner herein and two other witnesses, and those were

XI-HC-22

34

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक C.P.2790/05 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
S	permitted to be examined. Thereafter, the petitioner moved this application for examination of two more witnesses. Upon perusal of the orders it does not show that the trial Court in any way exercised the jurisdiction which is not vested with it or exercised the jurisdiction illegally or with material irregularity, as initially petitioner wanted to examine himself and two more witnesses and that was permitted, apart from that again he wanted to produce two more witnesses but even the names of those witnesses were not mentioned in the list of witnesses. Therefore, learned counsel for the petitioner has not been able to make out a case for interfering by this Court the order of trial Court in exercise of jurisdiction under Article 227 of the Constitution of India. Therefore, I do not find any substance in the petition and the same is liable to be dismissed, it is accordingly, dismissed, at the admission stage itself. Consequently, M.(W.)P.No.2320/05 and I.A.No.5542/05 stand disposed of. **Sd/-** **L.C. Bhadoo** **Judge** Gowri	

(पीछे देखिये)